

## **MINORITY BUSINESS PLAN**

### **I. DECLARATION OF POLICY**

It is the policy of the County of Buncombe and City of Asheville to: (1) provide minorities equal opportunity to participate in all aspects of County and City contracting and purchasing programs, including but not limited to, participation in procurement contracts, professional and other services contracts, and construction contracts; (2) prohibit discrimination against any person or business in pursuit of these opportunities on the basis of race, color, sex, religion, disability or national origin, and to conduct its contracting and purchasing programs so as to prevent any discrimination and to resolve all claims of such discrimination.

The County of Buncombe and City of Asheville will actively seek to identify qualified minority businesses and offer them an opportunity to participate as providers of goods and services to the County and City. It is the intent of this plan to widen opportunities for participation, increase competition and to ensure the proper and diligent use of public funds.

This policy is not intended in any manner to require that contracts be awarded to anyone other than the lowest responsible bidder, not to supersede the requirement of any federal, state or local laws and rules, regulations and policies adopted pursuant thereto.

### **II. PLAN OBJECTIVES**

The objectives of the plan are:

1. To provide minority businesses equal opportunity for participating in County and City construction, contracting and procurement programs.
2. To provide clear and concise procedures that will enable the County and City to fulfill requirements of federal and state governments related to equal employment opportunity for minority business participation in construction and procurement programs.
3. To increase the County's and City's knowledge of minority businesses and become familiar with available product lines and services through development of a minority business list.
4. To develop a certification program to assist minority businesses in becoming certified and keeping such firms informed of procurement needs, purchasing procedures and potential construction projects.
5. To sponsor workshops and conferences to assist minorities in becoming actively involved in procurement and subcontracting in large contract projects.
6. To provide clear and concise procedures for monitoring Plan compliance and to provide procedures for the resolution of complaints against businesses holding construction contracts, equipment contracts or service contracts with the County and City.

## MINORITY BUSINESS PLAN

### III. DEFINITIONS

**Bidder** -- Any person seeking to be awarded a public contract or subcontract.

**Certification Specialist** -- A function designated by the Minority Affairs Office to certify Minority Businesses.

**City** -- City of Asheville, North Carolina.

**Contract Compliance Officer** -- A function designated by the Minority Affairs Office that maintains the responsibilities of determining contract compliance.

**Contractor** -- Any person who has entered into a contract with the County and City.

**County** -- County of Buncombe, North Carolina.

**Director of Minority Affairs** -- A person designated by the County to direct the activities of the Minority Affairs Office in the coordination and management of the Minority Business Plan.

**Emergency Situations** -- A situation that poses a serious and immediate threat to the health and safety of the people or their property within the County of Buncombe and City of Asheville as declared by the governing body (ies).

**Joint Venture** -- An association of two or more businesses to carry out a single business enterprise for profit, for which purpose they combine their property, capital, efforts, skills and knowledge.

**Mentor-Protégé Program** -- A program of the Minority Business Commission whereby minority and non-minority firms provide assistance and mentorship to minority firms.

**Minority Affairs Coordinator** -- A person designated by the Minority Affairs Office to coordinate the Minority Affairs Program.

**Minority Affairs Office** -- An office established by the Buncombe County Commission to supervise, manage and implement the Minority Business Plan and serve as a liaison between the minority community, County and City officials.

**Minority Business** -- A business in which at least fifty-one percent (51%) is owned by one or more minority persons, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons and of which the management and daily business operations are controlled by one or more of the minority persons who own it.

**Minority Business Commission** -- A group of persons appointed by County Commission and City Council to provide oversight of the Program, to hear complaints regarding violation of the Minority Business Plan, to hear appeals, to provide training and to periodically review the Plan.

## MINORITY BUSINESS PLAN

**Minority Person** -- A person who is a citizen or lawful permanent resident of the United States and who is:

- a. Black, that is, a person having origins in any of the black racial groups in Africa;
- b. Hispanic American, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
- c. Asian American, that is, a person having origins in any of the original peoples of the Far East, South-East Asia, and Asia, the Indian subcontinent, or the Pacific Islands;
- d. American Indian or Alaskan Native, that is, a person having origins in any of the original peoples of North America; or
- e. Women, white female.

**Person** -- Includes individuals, corporations, partnerships, associations, legal representatives, trustees, trustees in bankruptcy or receivers.

**Procurement** -- Includes materials, supplies, apparatus, and equipment.

**Restructured Firms** -- A previously non-minority owned firm which through transfer of stock or other change results in minority ownership.

**Separate Specification Contract System** -- When the County or City enters into separate contracts with separate contractors for the construction of a public project pursuant to N. C. Gen. Stat. sec. 143-128.

**Single Prime Contract System** -- When the County or City enters into a single contract with a single contractor for the construction of a project pursuant to N. C. Gen. Stat. sec. 143-128.

**Subcontractor** -- Any person, who has contracted to furnish labor or materials to or who has performed labor for a contractor or another subcontractor in connection with a public construction contract.

**Verifiable Goal** -- The same as defined in N.C. Gen. Stat. Sec 143-128, as same may be amended from time to time by the N.C. General Assembly.

## **MINORITY BUSINESS PLAN**

### **IV. ADMINISTRATION**

#### **A. Establishment of the Minority Business Plan**

##### **1. Authority**

The County Manager and City Manager are hereby authorized to take all usual and legal administrative actions necessary to implement the Plan. Notwithstanding any specific assignment contained in the Plan, the ultimate responsibility for its administration is assigned to the County Manager and City Manager.

This Plan shall apply to all construction contracts, procurement, professional and other service contracts administered by the County and City. All agencies funded in whole or part by the County and/or City should be encouraged to adhere to the policies set forth herein. There shall be a brief statement recognizing the County's and City's commitment to the Minority Business Plan included in all County and City written contracts. The provisions of this program take precedence over all departmental plans or procedures in conflict herewith, except for specific requirements mandated by state law or the terms of agreements enforced between the County and City and the federal government or the State of North Carolina that require different procedures than those described in this Plan.

This Plan however, shall not apply in emergency situations (See definitions, Page 2) when a contract is awarded pursuant to non-competitive solicitation. The appropriate department head shall as soon as practical after the emergency non-competitive award, notify the Minority Affairs Office. The Minority Affairs Office shall calculate the percentage of County and City contracts awarded under this emergency exception to the Plan as well as under Section V.B.7, and include same in the Annual Report hereinafter referenced.

##### **2. Minority Affairs Office**

The County Manager and City Manager will designate the Minority Affairs Office as responsible for supervising, implementing, and managing this Plan. The County shall provide adequate staffing to ensure meaningful, certain and effective implementation of the Minority Business Plan.

##### **3. Minority Business Commission**

County Commission and City Council shall appoint an eleven (11) member Minority Business Commission consisting of one representative each from the following organizations: Council of Independent Business Owners, Associated General Contractors of America, National Association of Women in Construction, Asheville Area Chamber of Commerce, NAACP, Asheville-Buncombe Community Relations Council, the Asheville Business Development Center, Eagle/Market Streets Development Corporation, The American Institute of Architects and certified minority business owners from two (2) of the following four (4) categories for which goals have been set forth; construction, professional services, procurement, and other services. The Minority Affairs Office, with supplementary assistance from other County and City staff, will provide administrative support to the Commission. The County and City Attorneys/designees shall be the Commission's Legal Advisors.

The Minority Business Commission shall adopt rules of procedure, which shall include a procedure for the election of a Chairman and Vice Chairman from the Commission's membership. The Director of Minority Affairs/designee shall serve as the Commission's secretary.

## **MINORITY BUSINESS PLAN**

The Minority Business Commission, working in cooperation with the Director of Minority Affairs, shall be responsible for: (1) determining compliance with the provisions of this Plan when an appeal has been made, (2) hearing complaints regarding violations of the Plan, (3) training, (4) hearing appeals, (5) providing oversight, (6) reviewing the Plan periodically, (7) establishing and developing a Mentor-Protégé Program and (8) initiating annual meetings between County and City Managers to discuss specific concerns, other duties as necessary and deemed appropriate.

### **B. IMPLEMENTATION**

#### **1. Monitoring**

The County and City shall establish a centralized database to monitor bidders selected for contracts, purchase orders and check orders. The Minority Affairs Office shall be responsible for monitoring Plan compliance.

#### **2. Evaluation**

The County and City shall establish a system to provide the Minority Affairs Office information needed from County and City departments throughout the year to evaluate the program and to prepare the Annual Report. The Director of Minority Affairs will upon receiving approval of the County and City Managers, attend department head and management team meetings to explain what is needed to improve the program.

The Minority Affairs Coordinator shall obtain from the County and City departments a quarterly report listing all contracts originating within the City and County along with the dollar amounts. If required, the Minority Affairs Coordinator, in consultation with department heads, will determine reasons for achievement or non-achievement in meeting minority business goals. These reports will be used by the Minority Affairs Coordinator to prepare the Annual Report, as described below. At least annually the Minority Affairs Coordinator will, upon receiving approval of the County/City Manager, attend a department head meeting to explain the information needed in the quarterly report.

To continuously monitor the effectiveness of the Minority Business Plan, Minority Affairs Office shall prepare an annual report which report shall include but not be limited to: number of minority businesses, percentage of minority businesses contracting with the County and City either as a prime contractor or as a subcontractor, percentage of overall reported contracts awarded to minority businesses, percentage of contractors complying with good faith efforts, percentage of goals achieved and goals waived. The Annual Report shall be presented to County Commission and City Council after it has been reviewed and approved by the Minority Business Commission, along with any recommendations to increase the effectiveness of the Minority Business Plan.

#### **3. Workshops & Training**

The Office of Minority Affairs with the assistance of the appropriate County and City departments shall conduct seminars, and workshops and roundtable discussions to acquaint small businesses with County and City contracting activities and opportunities. Topics shall include but not be limited to: the process used by the County and City, preparing bids and quotes and information on accessing small business assistance programs. Additional classes may be provided with the assistance of the appropriate department on a project-by-project basis through structured seminars, classes, and individual assistance provided to minority businesses requesting this type of support.

## **MINORITY BUSINESS PLAN**

Such workshops shall include a session on cultural diversity and customer service. Every certified minority business owner (or designated representative) must attend at least one training annually to remain in active certified status through the Office of Minority Affairs. The County and City Managers shall require appropriate department heads to attend such workshops as well, which will benefit from leadership by elected officials and management. Training schedules will be mailed by October each year.

The Minority Affairs Office shall conduct information sessions on the Minority Business Plan for County and City department heads and key contracting staff. Such sessions shall include but not be limited to Internal Compliance, N. C. Gen. Stat. 143-128, and County and City Resolutions.

The County and City shall require for all of those staff members who are directly involved in the procurement and contracting process that good faith efforts towards goal attainment be a consideration in personnel evaluations. In addition, County and City Managers will meet annually, at the request of the Minority Business Commission to discuss specific concerns.

### **4. Race and Gender Neutral Measures**

To show its commitment to the Minority Business Plan and the declaration of policy set forth herein, the County and City may, where consistent with Federal, State and local laws:

- a. Waive bonding requirements;
- b. Provide for alternative bids by considering dividing formal (large) projects/purchases into smaller pieces;
- c. Provide department flow charts with explanations of the major steps in the contracting and procurement process;
- d. Require the Minority Affairs Office to provide, to the general public, annual summaries of contracting and procurement opportunities with the County and City from information received from departments following budget approval.
- e. Require the Minority Affairs Office to make an easily accessible location available where specifications, bid documents, RFPs and material relating to current and upcoming projects may be reviewed.
- f. Require the Minority Affairs Office to provide project information on Internet websites.
- g. Require the Minority Affairs Office to establish and maintain a voice mail line to announce upcoming projects.
- h. Provide listings of commonly purchased items.

## **MINORITY BUSINESS PLAN**

### **5. Other Measures**

The County and City shall:

- a. Subject to approval of Buncombe County Board of Commissioners and Asheville City Council have their Purchasing Department/Division maintain membership in the Carolina's Minority Supplier Development Council, providing a local chapter is established.
- b. Ascertain that the Community Reinvestment Act (CRA) ratings of banks are satisfactory prior to conducting business with them, and further make an assessment of their lending to minority businesses.
- c. Subject to the approval of the Buncombe County Commission and Asheville City Council if feasible, establish a community based loan pool in conjunction with local banking institutions by funding its administration.
- d. Inform the Minority Affairs Office of privilege license applicants claiming minority status.
- e. Inform the Minority Affairs Office of contracts awaiting execution.
- f. Share any letters of complaint or recommendation regarding certified minority businesses with the Office of Minority Affairs.

### **6. Duration**

The duration of the County's and City's Minority Business Plan shall be twenty years from the date of its adoption unless one of the reviews referred to hereinafter reveal that past discrimination has been removed.

The Minority Business Commission shall recommend the Minority Business Plan to be reviewed so as to reflect changes in the market area, update minority business availability and to reassess goals.

The City shall in the year 2013 conduct a comprehensive Disparity Study to determine whether disparity continues to exist and revise the duration of the Minority Business Plan accordingly.

## **V. PROCEDURES TO ENSURE EQUAL OPPORTUNITY FOR MINORITY BUSINESSES TO COMPETE FOR PROJECTS**

### **A. Construction Projects**

The County of Buncombe and City of Asheville shall provide equal opportunity for minority businesses to compete for construction projects. Those actions shall include those matters hereinafter set out.

1. The Minority Affairs Office shall compile a list of certified minority businesses included but not limited to the bidding area, using information obtained from the

## MINORITY BUSINESS PLAN

certification process as described in Article VII of this plan. The identification and recruitment of these firms is aided by the North Carolina Department of Economic and Community Development, Minority Business Development Agency or from other institutions or agencies providing such information.

The list shall describe the capabilities of certified minority businesses in Asheville, Buncombe County and the surrounding area, depending upon the scope of the project involved. The list shall include at least the following information: name of the business, address, telephone number, services or products provided, capabilities of the firm, line of work performed by the firm and type of work the firm is interested in performing.

This list shall be updated by the Minority Affairs Office and shall be open for inspection and available to City and County departments, general contractors and purchasers.

2. For each project put out for bids under the separate specification or the single prime contract systems, notice of the contract shall be transmitted to the appropriate minority businesses on the above list.
3. For formal building contracts put out for bids under the separate specification or single prime contract systems, the department shall hold a pre-bid conference to orient contractors and subcontractors to the policy expressed in this Plan as well as bid procedures and regulations. The Minority Affairs Office will be notified prior to the scheduling of the pre-bid conference to provide a staff member to review the Minority Business Plan during the pre-bid conference. Appropriate certified minority businesses on the list obtained and maintained as provided herein shall be notified of and invited to these pre-bid conferences.
4. For each project put out for bids under the separate specification or single prime contract system, published notice of the project shall include a summary of provisions of this Plan, which relate to construction contracts.
5. A period of at least twenty one (21) days must be given between advertising and receiving formal construction bids to provide minority businesses adequate time to obtain bonding and any needed technical assistance. Exceptions may be made in cases of special emergency (See definition, Page 2) involving the health and safety of the people or their property.
6. For any contract put out for bids under the separate specification and single prime contract system, the contractor shall:
  - a. Notify those certified minority businesses appearing on the list maintained pursuant to paragraph 1 of the portion of the project which will be sub-contracted by the single prime or separate specification contractor and solicit bids from those minority businesses.
  - b. Submit a listing of the minority business participation that will be utilized on the appropriate form (*MB Form 1*) or facsimile thereof with the bid in order for the bid to be considered responsive. Bidders must indicate the total dollar value of minority business participation for the contract. In the event the bidder has no minority business participation, he is still required to indicate this on the forms by entering the word or number zero. Blank forms will not be deemed to represent zero participation. BIDS



## MINORITY BUSINESS PLAN

SUBMITTED WITHOUT THE *MB Form 1* or the *MB Form 2*, WILL NOT BE CONSIDERED. If the bidder plans to perform all of the work without subcontracting, the *MB Form 2* should be submitted with the bid. Bidders must either submit all of the verification of the good faith effort made (in addition to the *MB Form 1*) to increase minority business participation with their bid or they may wait until the lowest bidder has been established and only that bidder would be responsible for providing the remaining documentation on the Checklist for Review of Good Faith Efforts; MB Form 1A (Certificate of MB Unavailability); MB Form 3 (Letter of Intent to Perform as a Subcontractor or Provide Materials or Services; and MB Form 4 (Certification Regarding Subcontractors for Building Construction Projects Only) within 72 hours after the bid opening.

- c. Submit bid records to the Minority Affairs Office with respect to:
  - (1) A listing of those elements of the project for which subcontracts will be let; potential subcontractors notified of the project; and the number of those potential subcontractors that are certified minority businesses appearing on the list maintained pursuant to paragraph 1 above.
  - (2) Those subcontractors that bid or otherwise respond to notice of the project and the number of these that appear on the list of certified minority businesses maintained pursuant to paragraph 1 above.
  - (3) Those subcontractors awarded contracts as part of the project and the number and identity of those that appear on the list of certified minority businesses maintained pursuant to paragraph 1 above.
  - (4) The percentage of work on the project that is to be performed by certified minority businesses appearing on the list maintained pursuant to paragraph 1 above.
- d. These policies shall be a part of the request for proposals for any such project, and non-compliance by any separate specification or single prime bidder shall be grounds for declaring the bid non-responsive.

7. The successful bidder shall:

- a. Maintain detailed subcontractor information and shall submit same to the Minority Affairs Office.
- b. Submit proof of payment to subcontractors as part of the payment request.
- c. Submit to the Minority Affairs Office and the appropriate contract administrator requests for approval of subcontractor changes during projects.
- d. Submit complete subcontractor records at project end to the contracting/purchasing department and submit same to Minority Affairs Office.

## **MINORITY BUSINESS PLAN**

8. For construction projects not requiring formal bids in accordance with state law the County and City shall, in addition to its normal procedures, include on its bid list for direct solicitation the same number of minority businesses certified as such by the Minority Affairs Office as non-minority businesses, up to the point at which all minority businesses listed for the type of construction have received a solicitation. The non-availability or limited availability of certified minority businesses in a specific type of construction does not limit the maximum number of non-minority businesses, which may be solicited.
9. For construction contracts that require formal bids in accordance with State law, contractors who propose to perform the total contract with their own work force and without the use of subcontractors shall issue a Statement of Intent to Perform Work Without Subcontracting (MB Form 2) along with supporting documentation sufficient for the County and City to certify that:  
  
that it is a normal business practice of the contractor to perform all elements of the contract with its own work force without the use of subcontractors,  
  
and  
  
that the contractor in fact has demonstrated its capabilities to perform all elements of the contract with its own work force without the use of subcontracts.  
  
Such contractors will not be required to document good faith efforts to subcontract with Minority Businesses. They will be required to document good faith efforts to provide equal opportunity for minority businesses to participate in significant material supplier opportunities available under the prime contract.
10. The County and City will meet its payment obligations in accordance with established County and City policy and State law. Nevertheless, payments for construction contracts will be made no later than thirty (30) days after receipt of an approved invoice, provided the construction work has been accepted by the County and/or City.

## **B. Procurement Contracts**

The County of Buncombe and The City of Asheville shall provide equal opportunity for minority businesses to compete for contracts for the purchase of apparatus, supplies, materials or equipment. Those actions shall include those matters hereinafter set out.

1. For those procurement contracts requiring the formal bid process, the County and City departments shall include in contract specifications specific instructions and procedures to define minority business compliance requirements.
2. The Minority Affairs Office shall provide a list of certified minority businesses identical to the list described in Article V, Section A.1. of this plan.
3. For procurement contracts requiring formal bids in accordance with State law, notice of the contract shall be transmitted by the County Purchasing Department or

## **MINORITY BUSINESS PLAN**

the City Purchasing Division to appropriate certified minority businesses on the above list.

4. For procurement contracts requiring formal bids in accordance with State law, documents related to the contract shall be available at the Minority Affairs Office.
5. For procurement contracts requiring formal bids in accordance with State law, the information in bid documents shall state the policy expressed in this Plan as well as bid procedures and regulations. Though not required, in those instances where a pre-bid conference is held, certified minority businesses in applicable trades on the list obtained and maintained as provided herein shall be notified of and invited to pre-bid conferences. The appropriate County department or the City Purchasing Division shall forward to the Minority Affairs Office a list of bidders contacted, provide bid summaries and indicate bidder selected.
6. For procurement contracts requiring formal bids in accordance with State law, published notice of the contract shall include a summary of the provisions of this Plan, which relates to contracts.
7. When a bidder is unable to perform successfully on a procurement contract, certified minority businesses shall be provided an equal opportunity to replace the non-performing bidder.
8. A period of at least ten (10) days will be given between advertising and receiving formal bids to provide minority businesses adequate time to obtain bonding and any needed technical assistance. Exceptions may be made in cases of special emergency as declared by the governing body, involving the health and safety of the people or their property (See definition, Page 2).
9. The County and City will meet their payment obligations in accordance with established County and City policy and State law. Nevertheless, payments for purchase of apparatus, supplies, materials or equipment will be made no later than thirty (30) days after receipt of an approved invoice provided the apparatus, supply, material or equipment has been accepted by the County and/or City.
10. For procurement contracts not requiring formal bids in accordance with State law, the County and City shall, in addition to its normal procedures, include on bid lists for direct solicitation those minority businesses certified as such by the Minority Affairs Office. The Purchasing Department/Division shall maintain a list of bidders contacted indicating the successful bidder to the Minority Affairs Office.

### **C. Professional Services Projects**

Appropriate County and City departments shall pursuant to approval of the annual budget, forward to the Minority Affairs Office a complete description of all projects planned for the year which would require hiring consultants or the services of professionals. The Minority Affairs Office shall supply the departments with current listings profiling those certified minority businesses, which specialize in areas of service, needed by the County and City. For those projects, which are developed after the annual budget is approved, a complete description of such projects shall be forwarded to the Minority Affairs Office.

## **MINORITY BUSINESS PLAN**

Monitoring of program compliance shall be conducted by the Director of Minority Affairs.

The soliciting departments shall include in the contract specifications, instructions, and procedures to define minority business compliance requirements as defined in Article V., Sections A and B for Construction and Procurement contracts. Though not required, in those instances where a pre-submittal meeting is conducted, the Minority Affairs Office shall review the purpose, procedures and plans for meeting minority business goals.

### **D. Other Services Projects**

Appropriate County and City departments shall forward to the Minority Affairs Office a description of all projects, as they are developed, which would require services other than those of professionals, i.e. maintenance and repair, as well as those planned for privatization or outsourcing. The Minority Affairs Office shall supply the departments with current listings profiling those certified minority businesses, which specialize in areas of service, needed by the County and City. Departments shall include with bids the procedures to define minority business compliance requirements. All bidders shall prepare information as defined in Article V., Sections A and B defining "good faith efforts" for minority business participation.

### **E. Responsibilities of Minority Business Firms**

Minority business firms are responsible for self-promotion as it pertains to consideration in the contracting process. In addition to self-promotion, the following steps are strongly recommended for minority business firms considering contractual relations with the County of Buncombe and City of Asheville:

1. Submit information to the contract recipients to identify firm status as that of a minority business.
2. Firms should become certified as minority businesses under County and City procedures, as detailed within this plan.
3. Contact federal, state and local minority business liaison offices and directories to obtain information on potential jobs.
4. Provide capability statements to state agencies, the County's Minority Affairs Office, consulting engineers and sub-contractors stating types of work performed by the firm, size of job that the firm could handle, bonding information and any special skills.
5. Make every effort to establish contacts and relationships with contractors for potential future business, including attending pre-bid conferences and subscribing to industry and trade journals.
6. Respond promptly to solicitation requests.
7. Notify the Minority Affairs Office immediately of change in ownership of minority business.
8. Document all contacts and communications made above so as to be able to assist the Minority Business Commission in determining whether a complaint lodged by a

## **MINORITY BUSINESS PLAN**

minority business firm against a bidder for failure to use good faith efforts can be validated by the complaining minority business firm.

9. Conditions on Certification as a minority business: In order to become certified as a minority business under the Minority Business Plan, the minority business shall:
  - a. Complete the minority business certification application process.
  - b. Wait a period of time up to one (1) year to become certified or recertified if restructured. If the firm will not have an ownership and/or control change but merely changing the company formation, i.e. sole proprietorship to incorporated, there is not a waiting period but the company must provide all documentation of the change for review before certification is granted.
  - c. Comply with Minority Business Plan requirements.
  - d. When newly certified, attend a workshop on the County and City contracting and procurement process. Minority firms will need to annually attend at least one (1) seminar and/or training meet training requirements from the following options listed to be renewed every two years. These minority firms have until December 31<sup>st</sup> of each year to do so.
    - Attend one (1) of the training sessions scheduled annually by the Office of Minority Affairs. A schedule is mailed out annually in October.
    - Successfully conduct business with the City of Asheville and/or Buncombe County within the two-year period (this includes subcontract work).
    - Refer a minority or woman-owned business who certifies with the Office of Minority Affairs by December 31<sup>st</sup> of the year they are to renew.
    - Meet with City and/or County purchasers, department heads, general contractors or other related businesses.
    - Meet with Minority Affairs staff to discuss business prospects in Asheville and Buncombe County.
    - Mentor another firm or become a protégé through the Mentor-Protégé Program.
    - Attend Minority Business Commission meetings.
    - Attend Minority Enterprise Development (MED) Week celebration events.
    - Membership and active participation in the Asheville Area Chamber of Commerce. Membership information will need to be provided to the Office of Minority Affairs.
  - e. Maintain all relevant professional licenses, professional certifications, and other such documentation that may be required to be in the name of the

**MINORITY BUSINESS PLAN**

minority owner or of the business in North Carolina to advertise themselves for services.

## **MINORITY BUSINESS PLAN**

### **VI. PROVISIONS FOR THE USE OF MINORITY OWNED BANKS AND INSURANCE BROKERS**

The County of Buncombe and City of Asheville will make provisions for equal opportunity usage of banks owned and controlled by minority businesses. The County Minority Affairs Office will investigate the full extent of services offered by banking institutions and insurance brokerages, which are owned and controlled by minority businesses in the community and endeavor to make use of these institutions.

A list of all known minority owned and controlled banking institutions and insurance brokers in the State of North Carolina will be included on the minority business list(s) maintained pursuant to the provisions of this Plan. The County of Buncombe and City of Asheville will encourage contractors, subcontractors and bidders to utilize this list(s) in their business activities.

### **VII. CERTIFICATION OF MINORITY BUSINESS FIRMS DESIRING TO PARTICIPATE IN COUNTY AND CITY PROCUREMENT, CONSTRUCTION, PROFESSIONAL AND OTHER SERVICE PROGRAMS**

The Minority Affairs Office is responsible for granting certification to minority businesses.

#### **A. Eligibility Standards**

1. In addition to considering the requirements to meet the definition of a minority business, the following standards will be used by the Minority Affairs Office in determining whether a firm is owned and controlled by one or more minorities and is therefore eligible to be certified as a minority business.
  - a. Minority group membership shall be established on the basis of the individual's claim that he or she is a member of a minority group and is so regarded by that particular minority community. However, the County and City are not required to accept this claim if it determines the claim to be invalid.
  - b. An eligible minority business shall be an independent business. The ownership and control by minorities shall be real, substantial and continuing, and shall go beyond any pro forma ownership of the firm as reflected in its ownership documents. The minority shall share in the risks and profits commensurate with their ownership interests, as demonstrated by the substances rather than the form or arrangements. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as a minority business. In determining whether a potential minority business is an independent business, the Minority Affairs Office shall consider all relevant factors, including the date the business was established, tax returns and adequacy of its resources for the work of the contracts.
  - c. The minority person shall also possess the power to direct or cause the direction of the management and policies of the firm and to make the day-to-day, as well as major, decisions on matters of management, policy and operations. The firm shall not be subject to any formal or informal restrictions, which limit the customary discretion of the minority. There

## MINORITY BUSINESS PLAN

shall be no restrictions through, for example, by-law provisions, partnership agreements or charter requirements for cumulative voting rights otherwise that prevent the minority owners, without the cooperation or vote of any owner who is not a minority person, from making a business decision of the firms. If the owners of the firm who are not minorities are disproportionately responsible for the operation of the firm, then the firm is not controlled by minorities and shall not be considered a minority business. Where the actual management of the firm is contracted out to individuals other than the owner, those persons who have the ultimate power to hire and fire the managers can be considered as controlling the business.

- d. All securities which constitute ownership and/or control of a corporation for the purposes of establishing it as a minority business shall be held directly by minority persons. No securities held in trust or by any guardian for a minor shall be considered as held by minority persons in determining the ownership or control of a corporation.
- e. The contributions of capital or expertise by the minority persons to acquire their interest in the firm shall be real and substantial.
- f. Newly-formed firms and firms whose ownership and/or control has changed since the date of the advertisement of the project are closely scrutinized to determine the reasons for the timing of the formation of, or change in, the firms.
- g. A previous and/or continuing employer-employee relationship between or among present owners is carefully reviewed to ensure that the employee-owner has the management responsibilities and capabilities described above.
- h. Any relationship between the minority business and a business which is not a minority business but which has an interest in the minority business is carefully reviewed to determine if the interest of the non-minority business conflicts with the ownership and control requirements.
- i. A joint venture is eligible if the minority business partner of the joint venture meets the standards for an eligible minority business set forth and the minority business partner is responsible for a clearly defined portion of the work to be performed and holds at least 51% of the ownership, control, management responsibilities, risks and profits of the joint venture.

### 2. Certification Package

Once certified, the minority businesses shall receive from the Minority Affairs Office, the names, business address, and telephone numbers of key County and City department heads involved in all aspects of County and City contracting. There shall also be included one-page organization charts of County and City government.

### 3. Retaining eligibility as a minority business.

- a. Once certified, a minority business shall update its certification every two years by submitting a minority business certification renewal



## **MINORITY BUSINESS PLAN**

form that states the information originally submitted is still accurate in its reflection of ownership or control of the firm. Additionally, the minority business firm is to attend at least one (1) training annually as described in Article V., Section E, 9d. A renewal form will be mailed to the certified minority or woman owned firm the first business day of the month prior to the expiration date. Approved applicants will be assigned a certification identification number for use in County and City contract activity. Additionally, approved applicants will receive a certificate, current minority business plan, current minority business directory, vendor applications for the City of Asheville and Buncombe County (if not applied for as yet) and a training/seminar schedule for the current year.

- b. If ownership or control of the firm has changed, the minority business must submit a new certification form. The denial of certification by the Minority Affairs Office shall be final for that project and other projects being let by the County and/or City at the time of denial of certification. Minority businesses and joint ventures denied certification may correct deficiencies in their ownership and control and apply for certification only for future projects and following one year.

### **B. Certification Process**

Each applicant applying for certification will be required to fill out an application for certification and provide all supporting documentation requested. The following information is requested of all businesses:

1. Resumes of all owners who are responsible for the day-to-day management of the firm.
2. Federal tax returns for the most recent calendar year.
3. Banking signature cards.
4. Office space and equipment leases.
5. Licenses (business, contractor, professional registration or certification).
6. Proof of authority to do business with the City, State.
7. Certifications received, denials or revocations from other government agencies.
8. Clear statement prepared and signed by a CPA or an attorney upon review of the firm's complete records which supports the firm's identification as a business owned, controlled and managed by ethnic minorities or women.
9. Reference letters and/or names, addresses and phone numbers.
10. Proof of minority status, i.e. copy of driver's license, birth certificate, etc.).
11. Federal Employer ID – Social Security number if the firm has no ID number.

Each business applying for certification is also required to supply specific documentation relevant to their business type. These business types include: corporation, limited liability company, partnership, franchise, new business, joint venture and sole proprietorship.

Once a firm has submitted an application, it is immediately reviewed for all information and documentation. A letter is sent within two (2) business days requesting any additional documentation or clarification and a follow up call is made within 5 to 7 business days to insure the information was received and that the firm is continuing with the process. After all the information is received, the following is done before certification is approved:

1. Review of the application for certification and documentation thoroughly.
2. Contact business and client references.

## **MINORITY BUSINESS PLAN**

3. Site visit if in the local area, in lieu of companies out of town, contact other certifying agencies to receive information on their site visits and verifying company information. A company may be denied certification if not currently certified with an agency close to or in their area for site visit purposes. This is determined on a case-by-case basis.
4. A site visit/certification evaluation is written for the company's file and if all information verifies the minority or women owned status of the company, certification is granted.

### **C. Appeal of Minority Affairs Office Actions**

1. Decisions. Within 30 days after receipt of a completed application and supporting data for designation as a Minority Business, the Minority Affairs Office shall render a written decision either approving the application or denying the application for status as a Minority Business. The decision shall be served by U.S. First Class Mail upon the Applicant at the address shown in the application. If the application is denied, the decision shall clearly state the bases for denial with specific reference to the section(s) of the Minority Business Plan supporting the denial. If more information is needed before it can be determined whether the application should be granted or denied, the Certification Specialist shall within 15 days of receipt of the application inform the Applicant in writing of the additional information needed. The application shall not be considered until the additional information is provided to the Minority Affairs Office, and in no event after the expiration of 90 days unless a request for an extension of time is made in writing by the applicant. The Certification Specialist may grant one extension of time. Additional requests for extensions of time shall only be granted by the Director of Minority Affairs for good cause shown. If after the expiration of 90 days from the request made by the Certification Specialist for additional information, no response is received from the Applicant and the Minority Affairs Office does not have reason to believe that the Applicant did not receive the request for additional information, the application shall be deemed inactive and shall receive no further consideration.
2. Reconsideration. An Applicant who believes that certification as a Minority Business has been wrongly denied may request Reconsideration of its application. A written request for Reconsideration shall be filed with the Office of Minority Affairs. The request shall be filed with the Office of Minority Affairs no later than 15 days after the date of U.S. postmark of the Decision for which Reconsideration is being requested. The Applicant shall provide the Office of Minority Affairs with a detailed statement of why it believes its status as a Minority Business was wrongly denied along with any and all additional supporting data which was not previously provided to the Minority Affairs Office by the Applicant no later than 30 days after the date of U.S. postmark of the decision for which Reconsideration is being requested.

The Minority Affairs Office shall review the request for Reconsideration and render a written decision either affirming or reversing its prior Decision. If additional information is needed, the process described in Section VII. C. 1. shall be followed.

A request for Reconsideration under this Section shall state the time for filing an appeal pursuant to Section VII. C. 3.; provided, that the time for appealing from a decision on Reconsideration shall be ten (10) days rather than thirty (30).

## **MINORITY BUSINESS PLAN**

Reconsideration of a decision of the Minority Affairs Office may be requested only once.

3. **Appeal of Minority Business Commission.** If the Applicant is dissatisfied with a Decision rendered pursuant to this Article, the Applicant may appeal to the Minority Business Commission. The appeal shall be filed with the Office of Minority Affairs no later than 30 days after the date of U.S. postmark of the Decision from which the appeal is being taken (10 days in case of appeal from decision on Reconsideration). Said appeal must be in writing and may be on a form prepared by the Office of Minority Affairs.

Within 30 days of receipt of the notice of appeal, the Office of Minority Affairs shall schedule a hearing on the appeal before the Minority Business Commission. The procedure at any hearing under this Section shall at a minimum provide that each party may have an attorney present, present evidence, call witnesses, and cross-examine witnesses. The Commission may be advised by an attorney in such hearings. The Commission may affirm reverse, modify in whole or in part the Decision that was appealed. The Commission shall serve its written decision upon the Applicant within fifteen (15) days after the hearing.

It is necessary that any appealing party have requested Reconsideration under Section VII. C. 2. in order to file an appeal under this Section. However, the time for filing an appeal shall be stayed during the pendency of a Reconsideration under Section VII. C. 2.; provided, that the time for appealing from a Decision on Reconsideration shall be ten (10) days rather than thirty (30).

4. **Information from Other Parties.** Any one having reason to believe that an Applicant has been wrongly granted or denied certification as a Minority business may submit written notice to either the Office of Minority Affairs or a member of the Minority Business Commission. Upon receipt of such written notice, it shall be the duty of the Director of Minority Affairs to determine if any investigation into the allegations is warranted. If an investigation is performed and it is the opinion of the Director of Minority Affairs that the Applicant's status as a Minority Business should be revoked, the procedures set forth in Section VII. D. below shall be followed prior to revocation. If an Applicant's status as a Minority Business is revoked, the Applicant shall have the right to appeal as set forth in this Article.
5. **Rules and Forms.** In order to effectuate the purposes of this Article, the Minority Business Commission may adopt appropriate rules and prescribe appropriate forms; provided, that failure to use a particular form shall not be a basis for denial of the relief requested.

### **D. Revocation of Certification**

1. The Minority Business Certification obtained pursuant to the Article shall be subject to revocation when any business having such Certification ceases to possess any of the qualifications of said certification.
2. The Minority Business Certification for a particular business may be revoked for a period of up to one year if such business is found to have obtained the Certification on the basis of inaccurate, false, or incomplete information to the County and/or

## **MINORITY BUSINESS PLAN**

City and shall be removed from the County's and/or City's bid list. In the case of any revocation pursuant to this Section, recertification as a Minority Business shall

not be automatic at the expiration of said revocation, but the affected business shall be permitted to reapply for said certification pursuant to this Article.

3. The determinations provided for in paragraphs 1 and 2 above shall be made initially by the Minority Affairs Office and a written statement of the reasons therefore shall be communicated in writing to the affected business. The determination of the Minority Affairs Office shall be final unless an appeal of said determination is taken as provided in Section C of this Article. During the pendency of such an appeal, the affected business will continue to be treated as a Minority Business for purposes of this Policy; provided that the pendency of an appeal shall be noted on the list established pursuant to Section V. A. 1. of this Policy, and any contract awarded on the basis of certification that is the subject of an appeal may be subject to revocation or cancellation, as provided or required by law if the appeal is unsuccessful.
4. A business, which believes its certification has been wrongly revoked or denied, may appeal such decision utilizing the procedures described in Article VII, Section C of this plan.

### **E. General Provisions for Overall Voluntary Construction, Procurement and Service Projects Verifiable Goals**

1. Separate verifiable goals for participation in awarded contracts by minority businesses will be set for the County's and City's construction projects, procurement projects and professional/consulting and other services projects.
2. Goals shall be set at 150% above availability or on a project-by-project basis by the Minority Affairs Office when provided sufficient time following notification of projects. The Minority Affairs Office shall waive goals prior to advertisement when there exists no availability. A minority business shall be counted only once in evaluating goals.
4. The annual verifiable goals for minority business participation in construction projects, minority business procurement projects, minority business professional and other services projects are as follows:

## MINORITY BUSINESS PLAN

### GOALS

#### **CONSTRUCTION**

African Americans  
Hispanic, Asian & Native Americans  
Women

#### **COUNTY**

12% overall  
for all  
minorities

#### **CITY**

3%  
1%  
8%

#### **PROCUREMENT**

African Americans  
Hispanic, Asian & Native Americans  
Women

#### **COUNTY**

10%  
overall for  
all minorities

#### **CITY**

5%  
2%  
18%

#### **PROFESSIONAL SERVICES**

African Americans  
Hispanic, Asian & Native Americans  
Women

#### **COUNTY**

10%  
overall for  
all minorities

#### **CITY**

7%  
7%  
37%

#### **OTHER SERVICES**

African Americans  
Hispanic, Asian & Native Americans  
Women

#### **COUNTY**

10%  
overall for  
all minorities

#### **CITY**

10%  
2%  
18%

## VIII. ENFORCEMENT

### A. Good Faith Efforts

1. Determinations of Good Faith Efforts shall be made by the Minority Business Commission through the Minority Affairs Office and include but are not limited to the following guidelines:
  - a. Whether the prime bidder attended any pre-solicitation or pre-bid conferences that were scheduled by the County and/or City;
  - b. Whether the prime bidder advertised at least 15 days prior to bid opening in general or construction related publications, and minority-based publications or newspapers;
  - c. Whether the prime bidder provided written notice to a reasonable number of specific minority businesses that their interest in the contract was being solicited in sufficient time to allow the minority businesses to participate effectively;
  - d. Whether the prime bidder followed up initial solicitations of interest by contacting minority businesses to determine with certainty whether the minority businesses were interested;
  - e. Whether the prime bidder selected portions of the work to be performed by minority businesses in order to increase the likelihood of meeting minority business goals (including, where appropriate, breaking down contracts into economically feasible units to facilitate minority business participation);

## **MINORITY BUSINESS PLAN**

- f. Whether the prime bidder provided interested minority businesses with adequate information about the plans, specifications and requirements of the contract;
  - g. Whether the prime bidder negotiated in good faith with interested minority businesses, not rejecting minority businesses as unqualified without sound reasons based on a thorough investigation of their capabilities;
  - h. Whether the prime bidder made efforts to assist interested minority businesses in obtaining bonding, lines of credit or insurance required by the County and/or City or bidder; and
  - i. Whether the prime bidder effectively used the services of the County's and City's minority community organizations, minority contractor's groups, local, state and federal minority business assistance offices and other organizations that provide assistance in the recruitment and placement of minority businesses;
  - j. Whether the prime bidder has retained the names of the minority businesses whom the bidder contacted or who have contacted the bidder, including the names, address, and telephone number of all such contacts; a description of efforts made to subcontract, a description of the outcome and a statement giving the reasons why the bidder and the minority business did not succeed in reaching a subcontracting or joint venture agreement;
  - k. Whether the prime bidder attempted to recruit minority businesses from at least the same geographic area from which the bidder attempted to recruit other subcontractors and other members of a joint venture;
  - l. Whether the prime bidder, consistent with industry practice, gave minority businesses necessary access to and adequate time to review all necessary project plans, drawings, specifications and other documents, as well as adequate time to prepare subcontract bids and/or negotiate joint venture arrangements;
  - m. Whether the prime bidder in rejecting a minority business as not qualified identified the factors which constitute the minority business not being qualified other than the amount of the minority business' bid;
  - n. Whether the prime bidder in rejecting a minority business as not being the lowest bid, included a statement of the amounts of all bids received from potential subcontractors.
2. Documentation of good faith efforts shall be submitted with and become a part of the bid to be considered responsive. Bids containing no documentation shall be deemed non-responsive.

### **B. Sanctions**

When the Minority Business Commission through the Minority Affairs Office determines that a successful bidder has failed to make or maintain good faith efforts as required by this Plan, the County and/or City may impose any or all of the sanctions as follows:

## **MINORITY BUSINESS PLAN**

- Deem it as an element of "poor performance" and consider it in the award of future contracts to the bidder.
- Refuse to award the contract to the bidder.
- Impose a penalty in an amount equal to five percent of the contract price. Provided however, the 5% penalty language must be made part of the bid notice and part of the contract.
- Remove the bidder from the bid list for a period of one (1) year.
- Suspend the bidder from participating in future contracts, i.e. debarment for a period of one (1) year.

If deemed appropriate by the Legal Department referral shall be made to the Office of the Attorney General for investigation.

## **IX. GRIEVANCE PROCEDURE**

1. Any participant feeling himself/herself aggrieved by implementation of the Minority Business Plan may present such grievance to the County or City within two (2) weeks. The grievance (except for certification as a minority business) shall be first discussed with the responsible operating department. If the grievance is not resolved, a written description of the grievance with appropriate supporting evidence shall be immediately presented to the Minority Affairs Office.
2. The Director of Minority Affairs will review the grievance and supporting evidence and make a written response to the participant within ten (10) working days. In the event the participant is not satisfied, said participant may immediately appeal the grievance by filing a written description thereof and supporting evidence with the Minority Business Commission.
3. The Minority Business Commission shall hear the grievance at its next scheduled meeting, or within 30 working days of the initial grievance documentation, whichever is shorter, and shall make a decision thereon. Grievance decisions made by the Minority Business Commission shall be limited to issues of compliance or non-compliance with the MB Plan.
4. The responsible operating City or County department involved in the grievance shall also submit a written response and supporting documentation to the Minority Business Commission for review at least three (3) days prior to the grievance hearing.

#### **MINORITY BUSINESS PLAN**

5. Should the aggrieved participant not be satisfied with said decision s/he may file the written grievance and evidence with the County or City Manager. The County Manager or City Manager shall hear the grievance within fifteen (15) working days and shall make a decision thereon, within fifteen (15) days of hearing the grievance, which decision shall be final. Any participant not satisfied by a decision of the County or City Manager may avail him/herself of any remedy available under the law.
6. Throughout the grievance procedure and until such time as the participant's grievance is resolved or pending the final decision of the County Manager or City Manager, the bid process shall be held and no awards shall be made.



**MINORITY BUSINESS PLAN**  
**TABLE OF CONTENTS**

I.	DECLARATION OF POLICY.....	PAGE 1
II.	PLAN OBJECTIVES.....	PAGE 1
III.	DEFINITIONS.....	PAGES 2-3
IV.	ADMINISTRATION.....	PAGES 4-7
	A. ESTABLISHMENT OF THE MINORITY BUSINESS PLAN	
	Authority.....	PAGE 4
	Minority Affairs Office.....	PAGE 4
	Minority Business Commission.....	PAGES 4-5
	B. IMPLEMENTATION	
	Monitoring.....	PAGE 5
	Evaluation.....	PAGE 5
	Workshops & Training.....	PAGES 5-6
	Race and Gender Neutral Measures.....	PAGE 6
	Other Measures.....	PAGE 7
	Duration.....	PAGE 7
V.	PROCEDURES TO ENSURE EQUAL OPPORTUNITY FOR MINORITY BUSINESSES TO COMPETE FOR PROJECTS.....	PAGES 7-13
	Construction Projects.....	PAGES 7-10
	Procurement Contracts.....	PAGES 10-11
	Professional Services Projects.....	PAGE 11-12
	Other Services Projects.....	PAGE 12
	Responsibilities of Minority Business Firms.....	PAGES 12-13
VI.	PROVISIONS FOR THE USE OF MINORITY OWNED BANKS AND INSURANCE BROKERS.....	PAGE 14
VII.	CERTIFICATION OF MINORITY BUSINESS FIRMS DESIRING TO PARTICIPATE IN COUNTY AND CITY PROCUREMENT, CONSTRUCTION, PROFESSIONAL AND OTHER SERVICE PROGRAMS..	PAGES 14-19
	Eligibility Standards.....	PAGES 14-16
	Certification Process.....	PAGES 16-17
	Appeal of Minority Affairs Office Actions.....	PAGES 17-18
	Revocation of Certification.....	PAGES 18-19
	General Provisions for Overall Voluntary Construction, Procurement and Service Projects Verifiable Goals .....	PAGE 19
VIII.	ENFORCEMENT.....	PAGES 20-22
	Good Faith Efforts.....	PAGES 20-21
	Sanctions.....	PAGES 21-22
IX.	GRIEVANCE PROCEDURE.....	PAGES 22-23

## **MINORITY BUSINESS PLAN**